

Bidding Requirements, Contract Forms and Conditions of the Contract
SUPPLEMENTAL GENERAL CONDITIONS
Section 00810CMR

The Supplemental General Conditions contained herein amend or supplement the General Conditions, Section 00700.

ARTICLE 1 – DEFINITIONS

Add the following definition:

1.4 Engineer/Architect (E/A): Add the following:

Name of Architect or Engineer

Company
Address line 1
Address line 2
City, State, Zip
Phone Number

Add the following definitions:

1.72 Commissioning Authority or Agent - A consultant retained by the OWNER charged with supporting E/A in monitoring the Work for conformance with the Contract Documents, and with assisting in the facility's start-up and testing as a member of the commissioning team.

1.73 Allowance - Allowance is defined as "a not-to-be-exceeded amount", either individually or in the aggregate, which is established between the Owner and the Contractor as part of its Bid Proposal when the precise scope of a particular line item(s) has not been defined to a level which is adequate for the Contractor to provide a definitive line item pricing for that particular scope of Work. The use of any Allowances by the Contractor will be subject to the Owner's sole approval and it is the Owner's intent to minimize the use of Allowances to the fullest extent possible. For any Allowances which the Owner allows the Contractor to use, the following rules shall apply: (i) Allowances shall cover the cost to the Contractor of the Cost of Work; (ii) Contractor's overhead and profit associated with the stated Allowance shall be included in the Allowance; and (iii) upon completion of the portion of the Work subject to an Allowance, the Contract Amount for that portion of the Work will be adjusted based upon the approved actual cost of the Work, which will not exceed the approved aggregate amount of the Allowances.

1.74 Mobilization Prompt Payment Program - The Owner's Mobilization Prompt Payment Program, will allow bimonthly payments during "critical mobilization stages" as specified in the Contract Documents by the Prime Contractor. The Mobilization Prompt Payment Program will only apply to projects with a construction cost greater than \$2,000,000.

1.75 Quick Pay Program - the Owner's program which will require the CM to pay Owner designated Subcontractors, who are participating in the Quick Pay Program ("Program Subcontractors"), from a Quick Pay Program allowance to be funded by the Owner with ten (10) days of approval of an acceptable invoice from the CM for satisfactory completion of a portion of the Work by a Program Subcontractor and the Owner's inspection of the Work, regardless of whether the CM has submitted a pay application or been paid by Owner for such portion of the Work. A Program Subcontractor must be approved by

the Owner to participate in the Quick Pay Program and must be a City certified MBE/WBE/DBE/SBE firm. The Quick Pay Program allowance ("Program Allowance") will be included in the Work Packages and Partial and Final GMP as a funding source for Quick Pay Program payments and will act as a revolving line of credit account to be used to temporarily fund payments to Program Subcontractors for completed and accepted Work by the Owner, subject to periodic reimbursement of the Program Allowance in the monthly payment process with a reconciliation of the Program Allowance and Contract Amount at Final Payment.

ARTICLE 2 - PRELIMINARY MATTERS

Add the following modification to the end of 2.4.2.1:

.1 The Baseline Schedule and schedule submittals for Projects in the Mobilization Prompt Payment Program must identify periods of 'critical mobilization.' The periods of critical mobilization will include the first two months of the Contract Time and additional periods identified by the Contractor and approved by Owner when peak Subcontractor mobilization will occur.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

Add the following:

3.6 Request for Changes:

3.6.1 Subcontractors.

- .1 Subcontractor(s) are listed in the Minority-Owned Business Enterprise (MBE)/Woman-Owned Business Enterprise (WBE) Compliance Plan, which Contractor submitted with its Statement of Qualifications and was approved by the Owner and is attached as Exhibit 9 to this Agreement. The Compliance Plan may be subsequently modified in approved Request for Changes, in accordance with paragraph below, and are made a part of this Agreement by reference.
- .2 The Construction Manager shall obtain Owner's written approval prior to terminating, adding or substituting Subcontractors. In the event that the Construction Manager proposes to add, substitute, or terminate an identified "Minority-Owned Business Enterprise" (MBE) or a "Women-Owned Business Enterprise" (WBE) certified Subcontractor from its approved plan for this Project, the Construction Manager shall comply with the City of Austin MBE/WBE Procurement Program: CHAPTER 2-9A: CONSTRUCTION, Austin City Code and the goals established in the Project solicitation. If the Construction Manager is unable to substitute a Subcontractor in compliance with the Austin City Code, the Construction Manager shall provide Owner with written documentation of their good faith efforts to acquire the services of a MBE/WBE replacement company. All requests to change the Construction Manager's MBE/WBE Compliance Plan must include documentation to support the request.

3.6.2 Key Personnel.

- .1 The Construction Manager's Key Personnel, including its Project Manager, Pre-Construction Manager, Superintendent, and Cost Estimator and the Construction Manager's associated Subcontractors/Subconsultants to be employed in the performance of the LEED Consultant, Public Relations Coordinator, and

MBE/WBE/Small Business Outreach services shall not be changed except with the Owner's prior written approval, which will not be unreasonably withheld.

- .2 The Construction Manager's Key Personnel are identified in Exhibit 3, which may be subsequently modified in an approved Request for Changes in Key Personnel. Changes to Key Personnel require that the individual being added must be comparably as qualified as the individual being replaced. Request for Changes of Key Personnel must be in writing using the Request for Changes of Key Personnel form. Approved Requests for Changes to Key Personnel are made a part of this Agreement by reference.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.1 Availability of Lands: Add the following:

CONTRACTOR shall contact OWNER's Transportation Department to obtain a Temporary Use of Right-of-Way Permit prior to beginning construction on any sidewalk/driveway or occupying any parking area/meters within the public rights-of-way.

Field Notes and Special Provisions to Easements, where applicable, are attached to Section 00810. All Work associated with Special Provisions to Easements shall be subsidiary to the entire Bid, unless otherwise specified.

Should the actions of the CONTRACTOR, or its Subcontractors, Vendors, or Suppliers, cause the Work to be delayed to the point that the ending date of an easement has been exceeded, the CONTRACTOR shall be responsible to reimburse the OWNER for any additional costs required to extend the period of rights to the easement in order to complete the Work. This delay shall be considered to be any period of time required by the CONTRACTOR to fully and satisfactorily execute the Work that is in addition to the original Contract duration, as modified by any executed Contract change orders.

ARTICLE 5 - BONDS AND INSURANCE

5.3 Other Bond and Insurance Requirements:

5.3.1 General Requirements.

- .1 CONTRACTOR shall carry insurance in the types and amounts indicated below for the duration of the Contract, which shall include items owned by OWNER in the care, custody and control of CONTRACTOR prior to and during construction and warranty period.
- .2 CONTRACTOR must complete and forward the Certificate of Insurance, Section 00650, to OWNER before the Contract is executed as verification of coverage required below. CONTRACTOR shall not commence Work until the required insurance is obtained and until such insurance has been reviewed by OWNER. Approval of insurance by OWNER shall not relieve or decrease the liability of CONTRACTOR hereunder and shall not be construed to be a limitation of liability on the part of CONTRACTOR. CONTRACTOR must also complete and forward the Certificate of Insurance, Section 00650, to OWNER whenever a previously identified policy period has expired as verification of continuing coverage.
- .3 CONTRACTOR's insurance coverage is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better, except for hazardous material insurance which shall be written by companies with A.M.

Best ratings of A- or better.

- .4** All endorsements naming the OWNER as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall indicate: City of Austin, Capital Contracting Office, P.O. Box 1088, Austin, Texas 78767.
- .5** The "other" insurance clause shall not apply to the OWNER where the OWNER is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both OWNER and CONTRACTOR, shall be considered primary coverage as applicable.
- .6** If insurance policies are not written for amounts specified below, CONTRACTOR shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- .7** OWNER shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- .8** OWNER reserves the right to review the insurance requirements set forth during the effective period of this Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by OWNER based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as CONTRACTOR.
- .9** CONTRACTOR shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- .10** CONTRACTOR shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- .11** CONTRACTOR shall provide OWNER thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- .12** If OWNER owned property is being transported or stored off-site by CONTRACTOR, then the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect OWNER's property.
- .13** The insurance coverages required under this contract are required minimums and are not intended to limit the responsibility or liability of CONTRACTOR.

5.3.2

Business Automobile Liability Insurance. Provide coverage for all owned, non-owned and hired vehicles. The policy shall contain the following endorsements in favor of OWNER:

- a) Waiver of Subrogation endorsement CA 0444;
- b) 30 day Notice of Cancellation endorsement CA 0244; and
- c) Additional Insured endorsement CA 2048.

Provide coverage in the following types and amounts:

- .1 A minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability each accident.

5.3.3 Workers' Compensation and Employers' Liability Insurance. Coverage shall be consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Section 401). CONTRACTOR shall assure compliance with this Statute by submitting two (2) copies of a standard certificate of coverage (e.g. ACCORD form) to Owner's Representative for every person providing services on the Project as acceptable proof of coverage. The Certificate of Insurance, Section 00650, must be presented as evidence of coverage for CONTRACTOR. CONTRACTOR's policy shall apply to the State of Texas and include these endorsements in favor of OWNER:

- a) Waiver of Subrogation, form WC 420304; and
- b) 30 day Notice of Cancellation, form WC 420601.

The minimum policy limits for Employers' Liability Insurance coverage shall be as follows:

- .1 \$100,000 bodily injury per accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
- .3 Reserved.

5.3.4 Commercial General Liability Insurance. The Policy shall contain the following provisions:

- a) Contractual liability coverage for liability assumed under the Contract and all contracts relative to this Project.
- b) Completed Operations/Products Liability for the duration of the warranty period.
- c) Explosion, Collapse and Underground (X, C & U) coverage.
- d) Independent Contractors coverage (Contractors/ Subcontractors work).
- e) Aggregate limits of insurance per project, endorsement CG 2503.
- f) OWNER listed as an additional insured, endorsements CG 2010 and CG 2037 or equivalent.
- g) 30 day notice of cancellation in favor of OWNER, endorsement CG 0205.
- h) Waiver of Transfer of Recovery Against Others in favor of OWNER, endorsement CG 2404.

Provide coverages A&B with minimum limits as follows:

- .1 A combined bodily injury and property damage limit of \$500,000 per occurrence.
- .4 Reserved

5.3.5 Professional Liability Insurance. For Work which requires professional engineering or professional survey services to meet the requirements of the Contract, including but not limited to excavation safety systems, traffic control plans, and construction surveying, the CONTRACTOR or Subcontractors, responsible for performing the professional services shall provide Professional Liability Insurance with a minimum limit of \$500,000 per claim and in the aggregate to pay on behalf of the assured all

sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed with respect to all professional services provided in due course of the Work of this Contract.

ARTICLE 6 - CM'S RESPONSIBILITIES

6.5.5 Permits, Fees: Add the following:

OWNER will obtain and pay for the following permits, licenses and/or fees:

- .1 Site Development Permit.
- .2 Building Permit(s). OWNER's responsibility for obtaining and paying for the Building Permit(s) shall be limited to the following where applicable: the required Electrical Service (Aid of Construction) Fee, Water and Wastewater Tap Fees, Water and Wastewater Capital Recovery Fees, and Septic Permit Fee. The OWNER's responsibility for obtaining and paying for the Building Permit(s) excludes securing and paying for the following where applicable: Driveway Permit (Concrete) Fee, Electrical Permit, Mechanical Permit, Plumbing Permit, Water Engineering Inspection Fee, Temporary Use of Right-of Way Permit, the gas company's Gas Yard Line Contribution Fee, and any other permits/fees not listed above.
- .3 Texas Department of Transportation permit for Work in State rights-of-way.
- .4 Railroad Utility License Agreement.

6.6 Laws and Regulations: Add the following:

6.6.4 This Work is subject to the Texas Pollution Discharge Elimination System (TPDES) permitting requirements for the installation and maintenance of temporary and permanent erosion and sediment controls and storm water pollution prevention measures throughout the construction period.

OWNER has prepared a Storm Water Pollution Prevention Plan (SWPPP). Reference Section 01096 for this SWPPP.

OWNER shall file the Owner's Notice of Intent to the Texas Commission on Environmental Quality (TCEQ). OWNER shall pay the TPDES storm water application fee.

CONTRACTOR's responsibilities are as follows:

- .1 Obtain a signed certification statement from all Subcontractors responsible for implementing the erosion / sedimentation controls and other best management practices that are part of the SWPPP. This statement shall indicate that the Subcontractor understands the permit requirements. The certified statement forms shall be attached to and become part of the SWPPP.
- .2 Fill out the TCEQ's "Construction Site Notice" form, which is Attachment 2 to the TPDES General Permit TXR150000 (form available from OWNER or on the Internet at:

<http://www.tceq.state.tx.us/assets/public/permitting/waterquality/attachments/stormwater/txr152d2.pdf> and post it near the main entrance of the Work, or at multiple postings if the Work is linear. Mail a copy of the completed Construction Site Notice form to the local Municipal Separate Storm Sewer Systems (MS4) representative:

TPDES Program Coordinator City

of Austin – WPD – ERM
P.O. Box 1088 Austin,
TX 78767

- .3 Maintain all erosion/sedimentation controls and other protective measures identified in the SWPPP in effective operating condition.
- .4 Perform inspections every five (5) working days and after every ½ inch rainfall event, noting the following observations on an inspection form provided by OWNER:
 - Locations of discharges of sediment or other pollutants from the site.
 - Locations of storm water / erosion / sedimentation controls that are in need of maintenance.
 - Locations of storm water / erosion / sedimentation controls that are not performing, failing to operate, or are inadequate.
 - Locations where additional storm water / erosion / sedimentation controls are needed.
- .5 Maintain at Work site at all times a copy of the SWPPP (with all updates, as described below) and inspection reports.
- .6 Update the SWPPP as necessary to comply with TPDES permitting requirements, which includes noting changes in erosion / sedimentation controls and other best management practices that are part of the SWPPP and which may be necessary due to the results of inspection reports. Any SWPPP revisions or updates must be signed and certified by a Certified Professional in Erosion and Sedimentation Control (CPESC) or a Registered Professional Engineer. If the SWPPP includes engineering calculations, then SWPPP must be sealed and signed by a Registered Professional Engineer.
- .7 Upon completion of the Work, provide TPDES records to OWNER.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.1 Application for Progress Payment: Delete 14.1.1 and replace with the following (changes to the original text are identified by underlining):

14.1.1 No more often than once a month, unless authorized as part of the Mobilization Prompt Payment Program, CONTRACTOR shall submit to Owner's Representative for review a completed and executed Application for Payment, in a form acceptable to OWNER, covering the Work completed as of the date of the Application and not previously paid and accompanied by such supporting documentation as required by the Contract Documents.

Add the following paragraph to 14.1.1:

.1 Mobilization Prompt Payment Program. During critical mobilization periods, as identified by the CONTRACTOR and as approved by OWNER in accordance with 00700 2.4.2.1 of this Contract, CONTRACTOR shall submit bi-monthly Applications for Payment. The additional Pay Applications will include any costs accrued during the periods of critical mobilization. The Program will allow the CONTRACTOR and Subcontractors to invoice for costs as they are accrued during periods of critical

mobilization. The CONTRACTOR shall submit bimonthly invoices to the OWNER for such costs. The CONTRACTOR shall pay Subcontractors for costs within 10 days of receipt of payment from OWNER.

14.4 Decisions to Withhold Payment:

Reference 14.4.1; add the following:

.17 property damage losses that are the responsibility of the CM (reference section 00810CMR, 5.3.2.5.4)”

14.8 Partial Utilization: Delete 14.8.1 and replace with the following (changes to the original text are identified by underlining):

14.8.1 Owner at any time may request Contractor to permit Owner to use any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Owner’s Representative that such part of the Work is substantially complete and request Owner’s Representative to issue a notice specifying what portion of the Work is substantially complete for the purpose of payment and what Work remains to be done on the portion being accepted. Contractor at any time may notify Owner’s Representative that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Owner’s Representative to issue a notice specifying what portion of the Work is partially completed for the purpose of payment and what Work remains to be done on the portion being accepted. The provisions of paragraphs 14.7.1 and 14.7.2 will apply with respect to the notice specifying what portion of the Work is partially completed for the purpose of payment and what Work remains to be done on the portion being accepted.

14.10 Final Application for Payment: Add the following paragraph(s) to 14.10:

.10 TPDES records in accordance with 6.6.4.

14.11 Final Payment and Acceptance:

Add the following to paragraph 14.11.1:

.1 If the Contract Documents require the maintenance of any trees and tree support infrastructure for two (2) years following Final Completion, the CM may execute a zero-cost “Tree Maintenance Change Order” for such Work and post fiscal security acceptable to Owner to ensure completion of the tree maintenance. The fiscal security will be a bond, letter of credit, or cash escrow in a form promulgated by Owner and posted with Owner’s Parks and Recreation Department. If the CM does not complete the tree maintenance work as required, the Owner, at its option, may complete the Work using the posted fiscal security.

.2 If the sole remaining, unfinished item of the Work is revegetation or other permanent erosion control, including, if applicable, tree mitigation, (collectively, the “revegetation”), the CM may execute a zero-cost “Revegetation Change Order” for such Work and post fiscal security acceptable to Owner to ensure completion of the revegetation.

.3 The fiscal security will be a bond, letter of credit, or cash escrow in a form promulgated by Owner and posted with Owner’s Watershed Protection Department.

.4 Upon receipt of the executed Revegetation Change Order and fiscal security, the Owner’s Representative will issue a conditional letter of final acceptance to the CM for the Work, excluding

the revegetation, which establishes the Final Completion Date for that Work and initiates the one year warranty period.

.5 This revegetation must be accomplished within 120 Calendar Days of the date of Final Completion of the balance of the Work or such other stipulated time for completion directed in the Change Order. When the revegetation has been established, Owner will inspect for final acceptance of that portion of the Work and, as applicable, initiate the one year warranty period for that Work. If the revegetation is not completed within the 120 Calendar Days or such other time set forth in the Change Order, the Owner, at its option, may complete the Work using the posted fiscal security.

END